

REMARKS

This paper is responsive to the Final Office Action dated October 16, 2009. All rejections are respectfully traversed and reconsideration is respectfully requested. No amendments are made to the claims, but a clean copy of the claims are presented herein for the Examiner's convenience.

Interview Request

The undersigned again respectfully requests the courtesy of a telephone interview with the Examiner at the Examiner's earliest convenience in order to expedite prosecution and avoid the necessity of appeal. The undersigned has left five telephone messages (11/16/09, 11/19/09, 12/2/09, 12/8/09 and 12/9/09) for the Examiner and the telephone calls have not been returned. The undersigned can be reached at the telephone number below.

Response to Rejections

All claims were rejected based upon the Blatter reference in combination with the Herley reference of record. Applicant has again reviewed the Blatter reference and believes that the Patent Office has over-broadened the actual disclosure of the Blatter reference to a point of mischaracterizing the actual disclosure of the Blatter reference.

In response to the allegations in the Office Action, Applicant reiterates the prior response in regard to Blatter by reference, stands by the prior positions and turns attention to the secondary Herley reference. Applicant further stands by the prior discussion of Herley and reiterates those arguments by reference. The Office admits that Blatter does not disclose that the same portion of the program is encrypted under a second encryption system and turns to Herley in search of such teaching. However, despite the assertions to the contrary of the Examiner, such teaching is totally lacking in Herley. Applicant can supply affidavit evidence to this fact if the Examiner would like to have such evidence of record.

The Office asserts that "Herley discloses a method and apparatus for partial encryption of content where the same portion of the program is encrypted two or more times" and references

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figs. 2-5, the abstract, page 1, paragraphs [0010-0013] and [0020-0031]. Applicant wishes to again note that the Herley reference is very familiar to Applicant. The assertion that Herley encrypts the same portion of the program two or more times is simply erroneous.

MPEP 2143.03 requires that all claim features must be considered during examination. "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970). Hence, in order to establish *prima facie* obviousness, the Office must identify each element of the claims in the cited art. By erroneous interpretation of the Herley reference, the Office fails on this count and thus the combination fails to establish *prima facie* obviousness as follows:

The Office asserts that Herley discloses "a method and apparatus for partial encryption of content where the same portion of the program is encrypted two or more times" and references figs. 2-5, the abstract, page 1, paragraphs [0010-0013] and [0020-0031] for support for the Office's position. However, that support is not to be found. There is in fact, no such teaching in Herley and the cited portions of Herley in fact support Applicant's position.

Fig. 2 of Herley clearly indicates that the file is divided into two files and that only the second file is encrypted.

Fig. 3 of Herley is quite illustrative of his process and shows that the data are split into parts 310 and 320 for transmission. Decryption is carried out to restore the second file in order to recreate the original image 300 as 340 by combining the two files.

Fig. 4 simply shows extraction of the portions of a JPEG file for placement in a second file.

Fig. 5 simply depicts transfer of data using public key encryption and decryption.

None of these figures singly or collectively disclose that which is alleged -- namely that "the same portion of content is encrypted two or more times". Nor does the reference teach the claimed duplication.

The abstract only states that the second file is encrypted, and does not allude to encryption more than once or duplication.

Paragraphs [0010-0013] only states that the second file is encrypted and never alludes to encryption more than once or duplication.

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Paragraphs [0020-0031] again only states that the second file is encrypted but allows that the original file can be divided into "multiple" files.

Applicant finds no teaching in Herley of the asserted "same portion of the program is encrypted two or more times" or of duplication of a portion of the program. Failure to correctly identify these claim features is fatal technical error leading to a fatally erroneous legal conclusion. In view of the failure to identify each and every claim feature and properly interpret each word of the claims, the proposed combination fails to establish *prima facie* obviousness. Reconsideration and allowance are respectfully requested.

Concluding Remarks

Applicant believes that the above distinctions between Applicant's claims and the Blatter and Herley references make it unnecessary to provide further arguments at this point. As such, failure to address each and every argument made by the Patent Office is believed unnecessary at this point. Accordingly, failure to address each and every point made by the Patent Office is not to be considered acquiescence to any such point.

In view of the discussion above, claims 1-51 are in proper condition for allowance. Reconsideration is respectfully requested and notice of allowance for all pending claims is respectfully requested at the earliest possible date.

If any issues remain, the Examiner is again earnestly requested to contact the undersigned to expedite allowance and issue and avoid the necessity and expense of appeal.

Respectfully submitted,

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